

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

# JUDITH JACKSON

## Claimant

VS.

## BOEING MILITARY AIRPLANES

Respondent

AND

## AETNA CASUALTY & SURETY

Insurance Carrier

AND

# KANSAS WORKERS COMPENSATION FUND

Docket No. 176,169

## ORDER

**ON** the 5th day of July, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge John D. Clark, dated May 31, 1994, came on for oral argument.

## APPEARANCES

The claimant appeared by and through her attorney, Steven R. Wilson of Wichita, Kansas. The respondent and insurance carrier appeared by and through their attorney, Frederick L. Haag of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Michael T. Harris of Wichita, Kansas. There were no other appearances.

## RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter including the May 31, 1994, Preliminary Hearing before Administrative Law Judge John D. Clark and the Application for Penalties Hearing of May 12, 1994, before Administrative Law Judge John D. Clark, and the exhibits attached thereto.

**ISSUES**

(1) Did the Administrative Law Judge exceed his jurisdiction in taking claimant's request for a referral to Mayo Clinic for a third opinion under advisement pending a court-ordered IME by Dr. William Shapiro?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds that the Administrative Law Judge's referral of claimant to Dr. William Shapiro for an IME was within his statutory authority under K.S.A. 44-516 and his decision to take the claimant's request for a referral to the Mayo Clinic under advisement pending this IME is not a violation of his jurisdictional authority.

K.S.A. 44-516 allows the Director, either upon request of either party or on the Director's own discretion, "[m]ay employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct."

In this disputed matter it has been recommended that claimant be referred to Mayo Clinic in order to be evaluated regarding the necessity for neck surgery. The Administrative Law Judge elected to refer claimant to Dr. William Shapiro, a Wichita-based neurosurgeon, for an opinion regarding the necessity and recommendation for the surgery. As it is within the Administrative Law Judge's authority to make this referral for an IME under K.S.A. 44-516, said referral would not be a violation of the Administrative Law Judge's jurisdiction under K.S.A. 44-551(b)(2)(A).

K.S.A. 44-534a makes applicable to both claimant and respondent the specific criteria and procedures required to proceed to preliminary hearing for purposes of obtaining medical treatment. K.S.A. 44-534a specifically delineates the issues appealable from a preliminary hearing and limits these issues to whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply.

The hearing in question involved a dispute between the parties regarding a potential referral to Mayo Clinic for ongoing medical care. Under the facts and circumstances herein, the Appeals Board finds that the Administrative Law Judge is statutorily entitled to refer the claimant for an independent medical examination under K.S.A. 44-516 and this Order is not one reviewable by the Appeals Board.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order dated May 31, 1994, wherein Administrative Law Judge John D. Clark ordered claimant for an IME with Dr. William Shapiro and placed claimant's request for referral to Mayo Clinic under advisement, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1994.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

- c: Steven R. Wilson, 1861 N. Rock Road, Suite 320, Wichita, KS 67206  
Frederick L. Haag, 700 Fourth Financial Center, Wichita, KS 67202  
Michael T. Harris, 125 N. Market, Suite 1416, Wichita, KS 67202  
John D. Clark, Administrative Law Judge  
George Gomez, Director